(25,315)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1915.

No. 1032.

KATE P. McNAUGHTON, APPELLANT,

vs.

HIRAM W. JOHNSON, GOVERNOR OF THE STATE OF CALIFORNIA, ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF CALIFORNIA.

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., MAY 29, 1916.

1 & 2 Supreme Court of the United States.

KATE P. MCNAUGHTON, Appellant,

vs.

HIRAM W. JOHNSON, Governor of the State of California; U. S. Webb, Attorney-General of the State of California, and Thomas Lee Woolwine, District Attorney of Los Angeles County, California, Appellees.

TRANSCRIPT OF RECORD.

Upon Appeal from the District Court of the United States of America in and for the Southern District of California, Southern Division.

3 *Names and Addresses of Attorneys.*

For Appellant: Tom L. Johnston, Esq., 221 O. T. Johnson Building, Los Angeles, California.

For Appellees: U. S. Webb, Esq., Attorney General of the State of California, Sacramento, California; Robert M. Clarke, Esq., Assistant to the Attorney General of the State of California, Los Angeles, California; Thomas Lee Woolwine, Esq., District Attorney of the County of Los Angeles, Los Angeles, California; George E. Cryer, Esq., Deputy District Attorney of the County of Los Angeles, Los Angeles, California.

4 In the District Court of the United States in and for the Southern District of California, Southern Division.

C-19. Equity.

KATE P. MCNAUGHTON, Plaintiff,

vs.

HIRAM W. JOHNSON, Governor of the State of California; U. S. Webb, Attorney General of the State of California; Thomas Lee Woolwine, District Attorney of Los Angeles County, Defendants.

Citation on Appeal.

UNITED STATES OF AMERICA, *ss:*

To Hiram W. Johnson, Governor of the State of California; U. S. Webb, Attorney General of the State of California, and Thomas Lee Woolwine, District Attorney in and for the County of Los Angeles, State of California:

You, and each of you are hereby cited and admonished to be and appear before the Supreme Court of the United States, to

be held at the city of Washington in the District of Columbia, on the 10th day of June, 1916, pursuant to an order allowing an Appeal, filed and entered in the Clerk's office of the District Court of the United States for the Southern District of California, Southern Division, from a final decree filed and entered on the 8th day of April, 1916, in that certain suit being in equity No. C-19, wherein Kate P. McNaughton is Complainant and Appellant and you are Defendants and Appellee-, to show cause, if any there be, why the decree rendered against said Appellant as in the said Order allowing appeal mentioned, should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness the Hon. O. A. Trippet, United States District Judge for the Southern District of California, Southern Division, this 12th day of April, A. D. 1916, and of the independence of the United States, the one hundred and fortieth.

OSCAR A. TRIPPET,
United States District Judge for the Southern District of California, Southern Division.

Received copy of the foregoing Citation on Appeal and hereby acknowledge service, this, the 12th day of April, 1916.

U. S. WEBB, *Att'y General;*
ROBERT M. CLARKE, *Deputy;*
THOMAS LEE WOOLWINE,
Dist. Att'y;
GEO. E. CRYER, *Chief Dep.,*
Solicitors for Defendants and Appellees.

[Endorsed:] No. C-19. Equity. United States District Court, Southern District of California, Southern Division. Kate P. McNaughton, Plaintiff, vs. Hiram W. Johnson, et al., Defendants. Citation on Appeal. Received copy of within Citation this 12th day of April, 1916. Thomas Lee Woolwine, Dist. Att'y; Geo. E. Cryer, Ch. Dep., Attorney- for —— ——. Tom L. Johnston, Esq., Attorney for Plaintiff. Filed Apr. 12, 1916. Wm. M. Van Dyke, Clerk, by T. F. Green, Deputy Clerk.

7 In the District Court of the United States in and for the Southern District of California, Southern Division.

No. C-19. Equity.

KATE P. MCNAUGHTON, Complainant,

vs.

HIRAM W. JOHNSON, Governor of the State of California; U. S. Webb, Attorney General of the State of California, and Thomas Lee Woolwine, District Attorney of Los Angeles County, California, Defendants.

8 In the District Court of the United —— in and for the Southern District of California, Southern Division.

In Equity.

KATE P. MCNAUGHTON, Plaintiff,

vs.

HIRAM W. JOHNSON, Governor of the State of California; U. S. Webb, Attorney General of the State of California, and Thomas Lee Woolwine, District Attorney of Los Angeles County, California, Defendants.

Bill of Complaint.

Kate P. McNaughton, as complainant brings this her Bill of Complaint against said defendants and each of them, and thereupon your orator complains and says:

I.

Complainant is a citizen of the United States of America, over the age of twenty-one years, and resides in the City of Los Angeles, County of Los Angeles, in the State of California.

II.

That Hiram W. Johnson is the Governor of the State of California, that U. S. Webb is Attorney General of the State of California, and that Thomas Lee Woolwine is the District Attorney of the County of Los Angeles, State of California, and that said last named defendants in their respective capacities named are holding
9 office under and by virtue of the laws of the State of California.

III.

Complainant is a regularly graduated op-thalmologist, which is a school of scientific learning and practice confined to the treatment of the imflam-ation of the eye and its membranes and in fitting glasses to the human eye; that complainant has practiced her said

profession in the City and County of Los Angeles, in the State of California for the past three years; that she is dependant entirely upon the proceeds of her labor and services as a practicing op-thalmologist; that complainant does not employ either medicine, drugs or surgery in her practice as a- op-thalmologist as aforesaid, or is there anything employed in her practice that is hurtful to the individual or dangerous to society.

IV.

Complainant further alleges that in her practice of her said profession of op-thalmology in the treatment of the inflam-ation of the eye and its membranes, it is absolutely necessary and indispensable that she measure the powers and range of human vision without the use of drugs; that there is no law in the State of California prescribing an examination for and regulating the practice of op-thalmology.

V.

Under the laws of the State of California, complainant alleges it is the duty of the Attorney General thereof amongst other things, to attend the Supreme Court of said State, to defend all cases to which said State is a party, and when required by the public service, or directed by the Governor, to repair to any County in the State to assist the District Attorney thereof in the discharge of his duties, and it is the duty of the District Attorney of Los Angeles County to attend the Superior Court and other Courts, and to conduct on behalf of the people of the State of California, all prosecutions for public offenses.

VI.

That the Legislature of the State of California, at its Fortieth session, which began on Monday, January 6th, 1913, and adjourned on Tuesday, May 12th, 1913, enacted the following law, in words and figures as follows, to-wit:

"An Act to Regulate the Practice of Optometry; to Provide for the Appointment of a Board of Optometry, Define its Duties and Powers and Prescribing a Penalty for the Violation of this Act.

The People of the State of California do enact as follows:

Section 1. It shall be unlawful for any person to engage in the practice of optometry without having first obtained a certificate of registration from the state board of optometry as provided for in this act or under the provisions of a certain act entitled "An act to regulate the practice of optometry and for the appointment of a board of examiners in the matter of said regulation," approved March 20, 1903, and acts amendatory thereof.

Sec. 2. The practice of optometry is hereby defined to be the employment of any means other than the use of drugs for the measure-

ment of the powers or range of human vision or the determination of the accommodative and refractive states of the human eye or the scope of its functions in general or the adaptation of lenses or frames for the aid thereof.

11 Sec. 3. A board is hereby created to be known as the state board of optometry which shall consist of three members appointed by the governor. No person shall be eligible to appointment who is not a registered optometrist of the State of California and actually engaged in the practice of optometry at the time of such appointment. Each of the members shall hold office for a term of six years or until his successor is appointed and qualified and shall be so classified that one member of said board shall retire every two years. The present members of the California state board of examiners in optometry appointed under the provisions of the act in section number one hereof referred to, shall continue to serve and act as members of the state board of optometry, but under the provisions of this act during their respective terms or until their successors are appointed and qualified. No person shall be eligible to membership in the said state board of optometry who shall be a stockholder in, or owner of, or a member of the faculty of or of the board of trustees of any school of optometry or who shall be financially interested directly or indirectly in any concern manufacturing or dealing — optical supplies at wholesale. No member of the board shall be financially interested in any purchase or contract in which the board is interested. No member of the board shall be financially interested in the sale of any property or optical supplies to any prospective candidate for examination before the board.

Sec. 4. The powers and duties of the said state board of examiners in optometry shall be as follows:

12 1. To organize and elect from their members a president and secretary of said board who shall hold office for one year or until the election and qualification of a successor; to adopt and use a common seal, and establish a permanent office. The secretary of the said board before entering into the discharge of his duties shall execute a good and sufficient bond to the State of California in the sum of one thousand dollars conditioned for the faithful performance of his duties as such secretary. He shall receive all fees and moneys paid to the board; keep all the records of the board and discharge such other duties as the board shall from time to time prescribe.

2. To make all necessary disbursements to carry out the provisions of this act, but only upon the signature of the president and secretary of the said board and only from the state optometry fund, including payment for the bond of the secretary of said board; payment for stationery supplies; necessary optical instruments to be used in the conduct of examinations which shall be the property of the state; the printing and circulating to all optometrists in the state, once a year, a year-book containing the names and addresses of all optometrists in this state; a per diem of ten dollars for each member of the said board for each day actually spent in the performance of his duties as such, and mileage of five cents per mile for all distances necessarily traveled in going to and coming from the

meetings of said board, in full compensation for all services; per diems shall not exceed one for any calendar day and shall not exceed two in any one calendar month, except that in months when examinations are being held per diems may be allowed for not to exceed five days in any such month. Additional compensation may be allowed the secretary not to exceed fifty dollars per month.

13 3. To employ agents, attorneys and inspectors to secure evidence of, report on, and prosecute to conviction all violations of this act and to employ other necessary assistants in the carrying out of the provisions of this act. No state officer shall be eligible to employment by the board.

4. To hold regular meetings at least twice a year at which an examination of applicants for certificates of registration shall be held at such places as the board shall from time to time designate and special meetings upon request of a majority of the members of said board or upon the call of the president.

5. To keep an accurate record of all the proceedings of the board and of all its meetings, of all receipts and disbursements with vouchers for all disbursements, and of all prosecutions for violations of this act, and of all examinations held for applicants for certificates of registration with the names and addresses of all persons taking examinations and their success or failure to pass such examinations. To keep an accurate inventory of all property of the board and of the state in the possession of the board and to obtain a receipt therefor from its successor. All the records of the board shall be public and shall be kept in the office of the board.

6. To visit and examine schools wherein the science of optometry is taught in this state and accredit such schools as shall have been found by such board to give a sufficient course of study for the preparation of optometrists.

7. To keep a register of optometrists which shall contain the names and addresses of all persons to whom certificates of registration have been issued in the State of California and of all itinerant licenses together with the date of the issuance of such certificates and licenses and the place or places of business in which each optometrist is engaged, and all renewals, revocations and suspensions thereof.

8. To grant or refuse to grant certificates of registration as herein provided and to revoke the certificate of registration of any

14 optometrist for any of the causes specified in section eleven hereof. To issue annual licenses to itinerant optometrists on receipt of fifty dollars for each license.

9. To administer oaths and take testimony upon granting and revoking or suspending any certificate of registration.

10. To report to the governor annually on the first Monday in January in each year giving an accurate account of the work of the board during the preceding year with a statement of all moneys received and paid out pursuant to this act.

Sec. 5. Any person over the age of legal majority who shall have attended a reputable school of optometry for a period of not less than one year or who shall have engaged in the lawful practice of optometry in another state for a period of not less than three years may file

an application duly verified by his oath for an examination before said board with the secretary of said board at least two weeks prior to the date of examination setting forth the following:

(*a*) The name, age and address of the applicant.

(*b*) The name of the optometry school attended and for what period of time such school was attended by the applicant.

(*c*) The previous experience, if any, of the applicant in the practice of optometry, or in assisting in the practice of optometry.

(*d*) A statement of the previous examinations taken before the board and the dates of such examinations if any.

Such application shall be accompanied by an examination fee of twenty dollars and in case such applicant has attended a school of optometry and places his application upon that ground, such application shall also be accompanied by a certificate of a duly accredited school of optometry, acknowledged before an officer authorized to take acknowledgments showing the applicant to have successfully completed one year's work in such school and recommending such applicant for examination. In case the applicant fails to pass the examination a second examination may be made and examination taken without charge. For all subsequent examinations a fee of fiften dollars shall accompany each application to be returned in case of failure to pass.

Sec. 6. Examinations shall be held and given by the board two times a year at such time and place as the board may from time to time fix and designate at least one month prior to the date of such examination, provided, however, that one of such examinations shall be held in the city and county of San Francisco, and the other in the city of Los Angeles. At such examinations the board shall examine applicants in the anatomy of the eye, in normal and abnormal, refractive and accommodative and muscular conditions and coordination of the eye, in subjective and objective optometry, including the fitting of glasses, the principles of lens grinding and frame adjusting, and in such other subjects as may be deemed necessary by the said board to determine the applicant's qualification to practice optometry. All such applicants without discrimination, who shall satisfactorily pass such examination shall thereupon be registered in the board's register of optometrists and a certificate of registration shall be issued to them, under the seal and signature of the members of said board upon payment of a fee of five dollars. Such certificate shall continue in force until the first day of August next succeeding.

Sec. 7. Before engaging in the practice of optometry it shall be the duty of each registered optometrist to notify the board in writing of the place or places where he is to engage or intends to engage in the practice of optometry and of any changes in his place of business, and any notice required to be given by the board to any registered optometrist may be given by mailing to such address through the United States mail, post paid. Each registered optometrist shall annually on or before the first day of August of each year pay to the secretary of said board a fee of two dollars for a renewal of his registration certificate and shall keep such certificate conspicuously posted in his office or place of business at all times;

a period of thirty days' grace shall be allowed after the first of August, during which registration certificates may be renewed on payment of a fee of five dollars. Any registered optometrist who shall temporarily practice optometry outside or away from his regular registered place of business shall deliver to each customer or person there fitted or supplied with glasses a receipt which shall contain his signature and show his permanent registered place of business and the number of his certificate, together with a specification of the lenses furnished and the amount charged therefor.

Sec. 8. It shall be unlawful for any registered optometrist to practice optometry while traveling from place to place without having first obtained from the state board of optometry an itinerant optometrist's license and paid therefor the sum of fifty dollars in addition to his regular registration fee. Such intinerant optometrists shall deliver to each customer or person fitted or supplied with glasses a receipt which shall contain his signature and show his place of residence and the number of his certificate, together with a specification of the lenses furnished and the amount charged therefor.

Sec. 9. Any person who shall violate any of the provisions of this act shall be guilty of a misdemeanor and upon conviction
17 thereof shall be fined not less than fifty dollars nor more than two hundred and fifty dollars or by imprisonment for not less than one month or more than three months for the first offense and for the second offense by a fine of not less than two hundred and fifty dollars nor more than one thousand dollars or by imprisonment in the county jail for not less than six months nor more than one year. All fines and forfeitures collected or received for violations of or in prosecutions under this act shall be paid one-half to the state treasurer for the benefit of the state optometry fund without demand and one-half to the school fund of the city or country where the prosecution is had. In any prosecution for a violation of section one, hereof the use of test cards, test lenses, or of trial frames shall be prime facie evidence of the practice of optometry.

Sec. 10. The provision of this act shall not be construed to prevent duly licenses physicians and surgeons from treating the human eye nor to prohibit the sale of complete ready-to-wear eye glasses as merchandise from a permanent place of business in good faith and not in evasion of this act by the person not holding himself out as competent to examine and prescribe for the human eye.

Sec. 11. Any person registered as provided for in this act may have his certificate of registration revoked or suspended for a fixed period by the state board of optometry for any of the following causes.

1. His conviction of a felony or misdemeanor involving moral turpitude, in which case the record of conviction, or a certified copy thereof certified by the clerk of the Court, or by the judge in whose court the conviction is had, shall be conclusive evidence of such conviction.

18 2. When his certificate of registration has been secured by fraud or deceit practiced upon the board.

3. For unprofessional conduct, or for gross ignorance or ineffici-

ency in his profession. Unprofessional conduct shall mean employing what are known as "cappers" or "steers" to obtain business; the obtaining of any fee by fraud or misrepresentation; employing, directly or indirectly any suspended or unlicenses optician or optometrist to perform any work covered by this act; the advertising of optical business or treatment or advice in which untruthful, improbable, or impossible statements are made; or habitual intemperance, or gross immorality, or shall permit another to use his certificate.

4. Who shall send a solicitor from house to house or who shall solicit from house to house.

5. When the holder is suffering from a contagious or infectious disease.

6. For any violation of the provisions of this act.

Sec. 12. Before any certificate shall be revoked or suspended the holder thereof shall have notice in writing of the charge or charges against him and at a date specified in said notice at least five days after the service thereof, be given a public hearing and have an opportunity to produce testimony in his favor, and to confront the witness against him.

The revocation or suspension of any license revoked or suspended for any of the above causes except those specified in one and two of section eleven may be set aside upon appplication of the person whose license has been revoked at any time within six months from the date of such revocation upon proof being made to the satis-
19 faction of said board that the cause of said revocation no longer exists and that the applicant has been sufficiently punished. Before setting aside the revocation of any certificate the board may in *his* discretion require the applicant to pass the regular examination given for applicants for certificates of registration.

Sec. 13. It shall be the duty of the state treasurer to keep a separate account and fund to be known as the state optometry fund, which shall be disbursed only upon the signatures of the president and secretary of the said board, contersigned by the state controller except that the sum of three hundred dollars may each year be disbursed upon the signature of the president and secretary of said board alone for emergencies as an urgent contingent fund. All fees collected by the secretary of said board shall on the first day of each month be paid to the state treasury for the benefit of the state optometry fund.

Sec. 14. Any member of the board who shall appropriate, retain or use for his own private use any of the funds of the board shall be guilty of a felony.

Sec. 15. This act shall be known and may be cited as the optometry law."

Said Act was approved June 16th, 1913 and went into effect August 10, 1913."

VII.

Further complaining your orator avers that the said pretended optometry law is unconstitutional, null and void, because the same

is repugnant to the Fourteenth Amendment to the Constitution of the United States, and repugnant more particularly to that clause in said Amendment which provides that no State shall deprive
20 any person of his life, liberty or property without due process of law, and particularly to that clause of said Amendment which prohibits any State from denying to any persons within its jurisdiction the equal protection of the law.

VIII.

Orator further alleges and complains that she has been arbitrarily deprived of her rights to practice her said profession on the same terms and under like circumstances with others engaged in the same pursuit. That equal protection and security under the same pretended law is denied to the plaintiff in as much as said law is highly discriminatory in that Section 10 of said law expressly provides that it shall not be construed to prevent duly licensed physicians and surgeons from treating or fitting glasses to the human eye.

IX.

Orator further complains and alleges that the said Act is unconstitutional in that it appropriates to the sole use of the registered optometrist the right to employ any means other than the use of drugs in the measurement of the powers or range of human vision.

X.

Orator complains and alleges that under said pretended law the Legislature of the State of California has under the guise of a police regulation created a monopoly favored by law in relieving physicians and surgeons from the equal operation of the said law and allowing them to treat and fit glasses to the human eye without complying with the requirements of said optometry law.

21

XI.

Orator further complaining alleges that the said pretended law in denying to all other schools of scientific learning and practice the right to measure the range of human vision other than by the use of drugs on equal terms with the physician and surgeon is in violation of the constitutional guarantees under the Fourteenth Amendment to the Constitution of the United States, and is therefor- unconstitutional and void.

XII.

Orator further alleges that the practice of her profession as a- opthamologist is a lawful occupation, innocent in its nature neither hurtful to the individual or dangerous to the community at large, and the State of California did not have the power under the guise of a police regulation to impose discriminatory regulations upon complainant which unduly and unnecessarily interfere with the

liberty of complainant to pursue unmolested and unrestrained the practice of her said profession as an op-thalmologist.

XIII.

Complainant avers that this suit is authorized by law to be brought by her to redress her deprivation under the color of law and statute of a state, of the right, privileges and immunities secured her by the Constitution of the United States under Section 266 of the Judicial Code of the United States.

22 XIV.

Further complaining orator avers that she has no adequate remedy at law and can only have redress in a Court of equity where such matters are peculiarly cognizable.

XV.

Further complaining your orator avers that U. S. Webb, Attorney General of the State of California and the said Thomas Lee Woolwine, District Attorney of the County of Los Angeles, State of California, unless restrained from so doing by an order of this Court will institute proceedings in the Courts of the State of California to inforce said pretended law and severely punish anyone who shall measure the range of human vision or fit glasses to the human eye without first having obtained a certificate of registration from the board of optometry of the State of California, for the infraction thereof. That complainant is in every way qualified to practice her said profession as an op-thalmologist in the treatment of the inflammation of the eye and membranes, in the measurement of the range of human vision by mechanical appliances only and in the fitting of glasses to the human eye. That complainant has no certificate of registration from the said optometry board.

In consideration whereof, and for as much as the said law is unconstitutional and void in so far as it effects your complainant in the right to practice said profession as an op-thalmologist, orator prays:

First. That the aforesaid statute of the State of California enacted as aforesaid and hereinbefore fully set out in so far as it
23 effects the complainant in the pursuit of her said profession as an op-thalmologist be declared to be in violation of and in contravention of the rights of this *defendant* under the Fourteenth Amendment of the Constitution of the United States.

Second. That the said U. S. Webb, Attorney General of the State of California, and the said Thomas Lee Woolwine, District attorney of the County of Los Angeles, State of California, and each of their successors, assistants, deputies, agents and employees be temporarily and permanently enjoined from in any way or manner enforcing against your complainant or attempting to enforce the provisions of the aforesaid unconstitutional and void statute, and for instituting or causing to be instituted any suit, prosecution or proceedings

to enforce against said complainant the provisions of the said law.

Third. That a temporary restraining order be granted before the hearing and determination of the application herein, for an interlocutory injunction because of the facts as alleged herein, that irreparable loss and damage will result to this complainant unless such temporary restraining order be granted.

Fourth. That claimant have such other and further relief as is just and equitable as well as a decree for costs.

Fifth. And may it please your Honor to grant unto complainant a Writ of Subpœna of the United States of America issued out of and under the seal of this Honorable Court directed to the said Hiram W. Johnson, Governor of the State of California, U. S. Webb,
Attorney General of the State of California, and Thomas Lee
24 Woolwine, District Attorney of the County of Los Angeles,
therein to be named and under a certain penalty to be and appear before this Honorable Court then and there to answer, but not under oath (the answer under oath being expressly waived) all and singular the premises and to stand to, perform and abide by such order, direction and decree as may be made against them in the premises, and the complainant will ever pray, et cetera.

TOM L. JOHNSTON,
Solicitor for Complainant.

STATE OF CALIFORNIA,
County of Los Angeles, ss:

I, Kate P. McNaughton, upon oath say: I am the complainant in the above entitled Bill and am familiar with the matters and things mentioned in said Bill which I have read; I know the contents thereof and the same are true of my *known* knowledge except as to those matters therein stated to be true on information and belief, and as to those matters I believe them to be true.

KATE P. McNAUGHTON.

Subscribed and sworn to before me this, the 7th day of March, 1916.

[SEAL.] CHAS. E. STANTON.
Notary Public in and for the County of Los Angeles, State of California.

My Commission Expires November 24, 1916.

25 (Endorsed:) No. C. 19 Eq. United States District Court, Southern District of California, Southern Division. Kate P. McNaughton, Plaintiff, vs. Hiram W. Johnson, et al., Defendants. Bill of Complaint. Filed Mar. 7, 1916. Wm. M. Van Dyke, Clerk, by Chas. N. Williams, Deputy Clerk.

26 In the District Court of the United States in and for the Southern District of California, Southern Division.

KATE P. MCNAUGHTON, Plaintiff,

vs.

HIRAM W. JOHNSON, Governor of the State of California; U. S. Webb, Attorney General of the State of California, and Thomas Lee Woolwine, District Attorney of the County of Los Angeles, California, Defendants.

Affidavit.

STATE OF CALIFORNIA,
County of Sacramento, ss:

T. B. Hagerty being first duly sworn, deposes and says: that he is a resident of the City of Sacramento, County of Sacramento, State of California; that he is over the age of 21 years, and is not interested in the subject matter of the above entitled action, or connected with any of the parties thereto; that on the 8th day of March, 1916, he served upon the Honorable Hiram W. Johnson, Governor of the State of California, in the City of Sacramento, a notice, a copy of which notice is hereto attached and made a part of this affidavit; and that at the time of the said service of said notice, he also served upon the Honorable Hiram W. John-
27 son, Governor of the State of California, in the City of Sacramento, a copy of the Bill of Complaint herein.

T. B. HAGERTY.

Subscribed and sworn to before me this 8th day of March, 1916.

[SEAL.] ALBERT D. SMITH,
Notary Public in and for the County of Sacramento of California.

My Commission expires Mch. 23, 1918.

28 In the District Court of the United States in and for the Southern District of California, Southern Division.

In Equity.

KATE P. MCNAUGHTON, Plaintiff,

vs.

HIRAM W. JOHNSON, Governor of the State of California; U. S. Webb, Attorney General of the State of California, and Thomas Lee Woolwine, District Attorney of the County of Los Angeles, California, Defendants.

Notice.

To Hiram W. Johnson, Governor of the State of California; U. S. Webb, Attorney General of the State of California; Thomas Lee Woolwine, District Attorney of the County of Los Angeles, State of California:

You and each of you will take notice that the plaintiff herein by her attorney, will make application to the Honorable Judges of the District Court of the United States, in and for the Southern District of California, Southern Division, sitting at Los Angeles, California, on the 30th day of March, 1916, at the Federal Court House, in the City of Los Angeles, in the State of California, at ten o'clock A. M., on said day, for an interlocutory injunction
29 herein restraining the defendants above named and each of them, from in any manner inforcing or attempting to inforce the provisions of a certain Act passed by the Legislature of the State of California, at its Fortieth Session, which began on Monday, January 6th, 1913, and which adjourned on Tuesday, May 12th, 1913, and which said Act was approved by the Governor June 16th, 1913, and went into effect August 10th, 1913, and designated as Chapter 598 of the Statutes and Amendments to the Code of California, and known as the optometry law, in so far as the said law affects the right of complainant to pursue her profession as an op-thalmologist, according to the Bill of Complaint filed herein, a copy of which is herewith served upon you.

And that at the same time and place and pending the hearing and determination of said application for an interlocutory injunction, the plaintiff will ask that a temporary restraining order issue herein under the provisions of Section 266 of the Judicial Code of the United States.

Dated at Los Angeles, California, this, the 7th day of March, 1916.

TOM L. JOHNSTON,
Solicitor for Plaintiff.

(Endorsed:) No. C. 19. Eq. United States District Court, Southern District of California, Southern Division. Kate P. McNaughton, Plaintiff, vs. Hiram W. Johnson, et al., Defendants.

Affidavit of Service of Notice and Copy of Bill of Complaint. Filed Mar. 16, 1916. Wm. M. Van Dyke, Clerk, by R. S. Zimmerman, Deputy Clerk.

30 In the District Court of the United States in and for the Southern District of California, Southern Division.

KATE P. MCNAUGHTON, Plaintiff,

vs.

HIRAM W. JOHNSON, Governor of the State of California; U. S. Webb, Attorney General of the State of California, and Thomas Lee Woolwine, District Attorney of Los Angeles County, California, Defendants.

Affidavit.

STATE OF CALIFORNIA,
City and County of San Francisco, ss:

Vincent S. Brown being first duly sworn, deposes and says: that he is a resident of the City and County of San Francisco, State of California; that he is over the age of 21 years, and is not interested in the subject matter of the above entitled action, or connected with any of the parties thereto; that on the 9th day of March, 1916, he served upon the Honorable U. S. Webb, Attorney General of the State of California, in the City and County of San Francisco, a notice, a copy of which is hereto attached and made a part of this affidavit, and that at the time of the said service of said notice, he also served upon the Honorable U. S. Well, Attorney General of the State of California, in the City and County of San Francisco, a copy of the bill of Complaint herein.

VINCENT S. BROWN.

31 Subscribed and sworn to before me this 9 day of March, 1916.

EDITH W. BURNHAM,
Notary Public in and for the City and County of San Francisco, State of California.

My Commission expires: January 30, 1918.

32 In the District Court of the United States in and for the Southern District of California, Southern Division.

In Equity.

KATE P. MCNAUGHTON, Plaintiff,

vs.

HIRAM W. JOHNSON, Governor of the State of California; U. S. Webb, Attorney General of the State of California, and Thomas Lee Woolwine, District Attorney of the County of Los Angeles, California, Defendants.

Notice.

To Hiram W. Johnson, Governor of the State of California; U. S. Webb, Attorney General of the State of California; Thomas Lee Woolwine, District Attorney of the County of Los Angeles, State of California:

You and each of you will take notice that the plaintiff herein by her attorney, will make application to the Honorable Judges of the District Court of the United States, in and for the Southern District of California, Southern Division, sitting at Los Angeles, California, on the 30th day of March, 1916, at the Federal Court House in the City of Los Angeles, in the State of California, at ten o'clock A. M., on said day, for an interlocutory injunction herein restraining the defendants above named and each of them, from in any manner inforcing or attempting to inforce the provisions of a certain Act passed by the Legislature of the State of Califor-
33 nia at its Fortieth Session, which began on Monday, January 6th, 1913, and which adjourned on Tuesday, May 12th, 1913, and which said Act was approved by the Governor June 16th, 1913, and went into effect August 10th, 1913, and designated as Chapter 598 of the Statutes and Amendments to the Code of California, and known as the optometry law, in so far as the said law affects the right of complainant to pursue her profession as an opthalmologist, according to the Bill of Complaint filed herein, a copy of which is herewith served upon you.

And that at the same time and place and pending the hearing and determination of said application for an interlocutory injunction, the plaintiff will ask that a temporary restraining order issue herein under the provisions of Section 266 of the Judicial Code of the United States.

Dated at Los Angeles, California, this, the 7th day of March, 1916.

TOM L. JOHNSTON,
Solicitor for Plaintiff.

(Endorsed:) No. C. 19. Eq. United States District Court, Southern District of California, Southern Division. Kate P. McNaughton, Plaintiff, vs. Hiram W. Johnson, et al., Defendants. Af-

fidavit of Service of Notice and Copy of Bill of Complaint. Filed Mar. 16, 1916. Wm. M. Van Dyke, Clerk, by R. S. Zimmerman, Deputy Clerk.

34 In the District Court of the United States in and for the Southern District of California, Southern Division.

KATE P. MCNAUGHTON, Plaintiff,
vs.
HIRAM W. JOHNSON, Governor of the State of California; U. S. Webb, Attorney General of the State of California, and Thomas Lee Woolwine, District Attorney of Los Angeles County, California, Defendants.

Affidavit.

STATE OF CALIFORNIA,
County of Los Angeles, ss:

A. S. Adams being first duly sworn, deposes and says: that he is a resident of the City of Los Angeles, County of Los Angeles, State of California; that he is over the age of 21 years, and is not interested in the subject matter of the above entitled action, or connected with any of the parties thereto; that on the 13th day of March, 1916, he served upon the Honorable Thomas Lee Woolwine, District Attorney of Los Angeles County, California, in the City of Los Angeles, a notice, a copy of which notice is hereto attached and made a part of this affidavit; and that at the time of the said service of said notice, he also served upon the Honorable Thomas Lee Woolwine, District Attorney of Los Angeles County, California, in the City of Los Angeles, a copy of the Bill of Complaint herein.

35

A. S. ADAMS.

Subscribed and sworn to before me this 15th day of March, 1916.

[SEAL] FREDERICK W. SMITH,
Notary Public in and for the County of Los Angeles, State of California.

My commission expires December 7, 1918.

36 In the District Court of the United States in and for the Southern District of California, Southern Division.

In Equity.

KATE P. MCNAUGHTON, Plaintiff,

vs.

HIRAM W. JOHNSON, Governor of the State of California; U S. Webb, Attorney General of the State of California, and Thomas Lee Woolwine, District Attorney of the County of Los Angeles, California, Defendants.

Notice.

To Hiram W. Johnson, Governor of the State of California; U. S. Webb, Attorney General of the State of California; Thomas Lee Woolwine, District Attorney of the County of Los Angeles, State of California:

You and each of you will take notice that the plaintiff herein by her attorney, will make application to the Honorable Judges of the District Court of the United States, in and for the Southern District of California, Southern Division, sitting at Los Angeles, California, on the 30th day of March, 1916, at the Federal Court House, in the City of Los Angeles, in the State of California, at ten o'clock, A. M., on said day, for an interlocutory injunction herein restrain-
37 ing the defendants above named and each of them, from in any manner inforcing or attempting to inforce the provisions of a certain Act passed by the Legislature of the State of California, at its Fortieth Session, which began on Monday, January 6th, 1913, and which adjourned on Tuesday, May 12th, 1913, and which said Act was approved by the Governor June 16th, 1913, and went into effect August 10th, 1913, and designated as Chapter 598 of the Statutes and Amendments to the Code of California, and known as the optometry law, in so far as the said law affects the right of complainant to pursue her profession as an op-thalmologist, according to the Bill of Complaint filed herein, a copy of which is herewith served upon you.

And that at the same time and place and pending the hearing and determination of said application for an interlocutory injunction, the plaintiff will ask that a temporary restraining order issue herein under the provisions of Section 266 of the Judicial Code of the United States.

Dated at Los Angeles, California, this, the 7th day of March, 1916.

TOM L. JOHNSTON,
Solicitor for Plaintiff.

(Endorsed:) No. C. 19. Eq. United States District Court, Southern District of California, Southern Division. Kate P. McNaughton, Plaintiff, vs. Hiram W. Johnson, et al., Defendants. Affidavit of Service of Notice and Copy of Bill of Complaint. Filed Mar. 16, 1916. Wm. M. Van Dyke, Clerk, by R. S. Zimmerman, Deputy Clerk.

38 At a stated term, to-wit, the January Term, A. D. 1916, of the District Court of the United States of America in and for the Southern District of California, Southern Division, Held at the Court-room thereof, in the City of Los Angeles, on Saturday, the Eighth Day of April, in the Year of Our Lord one Thousand Nine Hundred and Sixteen.

Present: The Honorable Erskine M. Ross, Circuit Judge; The Honorable Oscar A. Trippet, District Judge, and The Honorable Edward E. Cushman, District Judge.

No. C-19. Equity.

KATE MCNAUGHTON, Complainant,
vs.
HIRAM W. JOHNSON, Governor of the State of California, et al., Defendants.

Tom L. Johnston, Esq., appearing as counsel for complainant; Robert M. Clarke, Esq., Assistant to the Attorney General of the State of California, and George E. Cryer, Esq., Assistant District Attorney of the County of Los Angeles, California, appearing as counsel for defendants; this cause having heretofore been submitted to the court for its consideration and decision on a question as to the jurisdiction of this court herein; the court, having duly considered the same and being fully advised in the premises, now hand down their memorandum opinion thereon; and it is ordered that the challenge of the jurisdiction of this court in this suit be, and the same hereby is denied; and this cause thereupon coming on to be heard on complainant's motion for an interlocutory injunction; and said motion having been argued, in support thereof, by Tom L. Johnston, Esq., of counsel for complainant; it is thereupon by the court ordered that complainant's motion for an interlocutory injunction be, and the same hereby is denied.

39 In the District Court of the United States in and for the Southern District of California, Southern Division.

C-18. In Equity.

P. L. CRANE, Plaintiff,

vs.

HIRAM W. JOHNSON, Governor of the State of California; U. S. Webb, Attorney General of the State of California, and Thomas Lee Woolwine, District Attorney of the County of Los Angeles, California, Defendants.

C-19. In Equity.

KATE P. MCNAUGHTON, Plaintiff,

vs.

HIRAM W. JOHNSON, Governor of the State of California; U. S. Webb, Attorney General of the State of California, and Thomas Lee Woolwine, District Attorney of the County of Los Angeles, California, Defendants.

Before Ross, Circuit Judge, and Trippet and Cushman, District Judges.

40 Upon the authority of the cases of William Truax, Sr., and others, against Mike Raich, (Advance Sheets Supreme Court, Nov. 1, 1915), and Raich v. Truax, 219 Fed. 273, 283, we think the jurisdiction of the District Court over the present suits is clear. We have, therefore, only to determine whether upon the bill the complainant is entitled to an interlocutory injunction.

The rule is well settled that the granting of such orders is within the sound discretion of the court, and in the exercise of such discretion, based upon the averments of the bills, we are of the opion that the application should be denied. We do not understand that upon such an application as the present the court, composed, under statutory requirement, of the Judge of the District Court, of another District Judge and a Circuit Judge, is called upon, if, indeed, authorized, to decide the merits of the suits.

(Endorsed:) No. C.-18-C-19-Eq.-U. S. District Court, Southern District of California, Southern Division. P. L. Crane vs. Hiram Johnson, et al. Kate P. McNaughton vs. Hiram Johnson, et al. Memo. of Opinion of Court. Filed Apr. 8, 1916. Wm. M. Van Dyke, Clerk, by T. F. Green, Deputy Clerk.

41 In the District Court of the United States in and for the Southern District of California, Southern Division.

C-19. Equity.

KATE P. McNAUGHTON, Plaintiff,

vs.

HIRAM W. JOHNSON, Governor of the State of California; U. S. Webb, Attorney General of the State of California, and Thomas Lee Woolwine, District Attorney of Los Angeles County, California, Defendants.

Petition for Appeal.

To the Honorable Oscar A. Trippet, Judge of the United States District Court in and for the Southern District of California, Southern Division:

The above named plaintiff, feeling aggrieved by the order rendered and entered in the above entitled cause on the 8th day of April, 1916, refusing plaintiff's application for an interlocutory injunction, appeals therefrom to the Supreme Court of the United States, for the reasons set forth in the assignment of errors filed herewith. Plaintiff prays that this appeal be allowed and that citation be issued as provided by law, and that the transcript of the record, proceedings, and documents upon which said order was based, duly authenticated be sent to the Supreme Court of the United States, sitting at Washington, in the District of Columbia, under the rules of that Court in such cases made and provided.

TOM L. JOHNSTON,
Attorney for Complainant.

42 (Endorsed:) No. C-19. Equity. United States District Court, Southern District of California, Southern Division. Kate P. McNaughton, Plaintiff, vs. Hiram W. Johnson, et al., Defendants. Petition for Appeal. Received copy of within petition this 10 day of April, 1916. U. S. Webb, Robt. M. Clarke, Thomas Lee Woolwine, Geo. E. Cryer. Tom L. Johnston, Esq., Attorney for Plaintiff. Filed Apr. 12, 1916. Wm. M. Van Dyke, Clerk, by T. F. Green, Deputy Clerk.

43 In the District Court of the United States in and for the Southern District of California, Southern Division.

C-19. Equity.

KATE P. MCNAUGHTON, Plaintiff,

vs.

HIRAM W. JOHNSON, Governor of the State of California; U. S. Webb, Attorney General of the State of California, and Thomas Lee Woolwine, District Attorney of Los Angeles County, California, Defendants.

Assignment of Errors.

Now comes Kate P. McNaughton, by her attorney, Tom L. Johnston, complainant herein, and makes and files the following assignment of errors upon her appeal to the Supreme Court of the United States from an order of the District Court in and for the Southern District of California, Southern Division, denying plaintiff's application for an interlocutory injunction.

The District Court erred in denying the order for the interlocutory injunction in this case for the following reasons, to-wit:

I.

That plaintiff's Bill of Complaint filed in the above entitled cause, showed sufficient grounds for the granting of an interlocutory injunction.

44 II.

That it appears from the face of plaintiff's Bill of Complaint that the plaintiff is entitled to an interlocutory injunction to restrain the inforcement of the Statute of the State of California, which denies to the plaintiff the equal protection of the law, and which is in controvention of her rights guaranteed her under the Fourteenth Amendment of the Constitution of the United States.

Wherefore, plaintiff prays that said order be reversed and the District Court in and for the Southern District of California, Southern Division, be ordered to enter an order granting plaintiff's application for an interlocutory injunction.

TOM L. JOHNSTON,
Solicitor for Complainant.

(Endorsed:) No. C-19. Equity. United States District Court, Southern District of California, Southern Division. Kate P. McNaughton, Plaintiff, vs. Hiram W. Johnson, et al., Defendants. Assignment of Errors. Received copy of within Assignment this 10 day of April, 1916. U. S. Webb, Rob't M. Clarke, Thomas Lee Woolwine, Geo. E. Cryer. Tom L. Johnston, Esq., Attorney for Plaintiff. Filed Apr. 12, 1916. Wm. M. Van Dyke, Clerk, by T. F. Green, Deputy Clerk.

45 In the District Court of the United States in and for the Southern District of California, Southern Division.

C-19. Equity.

KATE P. McNAUGHTON, Plaintiff,

vs.

HIRAM W. JOHNSON, Governor of the State of California; U. S. Webb, Attorney General of the State of California, and Thomas Lee Woolwine, District Attorney of Los Angeles County, California, Defendants.

Order Allowing Appeal and Fixing Bond.

The above named complainant having petitioned this Court for an appeal from the order and decree made in this cause on the 8th day of April, 1916, denying the application of plaintiff for an interlocutory injunction, the Court hereby grants the said appeal from said judgment and it is hereby ordered that the said appeal be granted upon the giving of a good and sufficient bond in the sum of Three Hundred Dollars, to be approved by this Court for the payment of costs.

Done in open Court, this 12th day of April, 1916.

OSCAR A. TRIPPET,
Judge of the District Court of the United States in and for the Southern District of California, Southern Division.

46 (Endorsed:) No. C-19. Equity. United States District Court, Southern District of California, Southern Division. Kate P. McNaughton, Plaintiff vs. Hiram W. Johnson, et al., Defendants. Order Allowing Appeal and Fixing Bond. Received copy of within this 11 day of April, 1916. U. S. Webb, Att'y Gen.; Robert M. Clarke, Deputy, Attorneys for Defendants. Thomas Lee Woolwine, Geo. E. Cryer. Tom L. Johnston, Esq., Attorney for Plaintiff. Filed Apr. 12, 1916. Wm. M. Van Dyke, Clerk, by T. F. Green, Deputy Clerk.

47 In the District Court of the United States in and for the Southern District of California, Southern Division.

C-19. Equity.

KATE P. McNAUGHTON, Plaintiff,

vs.

HIRAM W. JOHNSON, Governor of the State of California; U. S. Webb, Attorney General of the State of California; Thomas Lee Woolwine, District Attorney of the County of Los Angeles, State of California, Defendant.

Bond on Appeal.

Know all men by these presents, That we, Kate L. McNaughton, the Complainant and Rollo E. Goodrich of Los Angeles, State of California, and Samuel W. Thomas of Los Angeles, State of California, as sureties, are held and firmly bound unto the above named Hiram Johnson, Governor of the State of California, U. S. Webb, Attorney General of the State of California, and Thomas Lee Woolwine, District Attorney in and — the County of Los Angeles, State of California, in the penal sum of three hundred dollars ($300.00) to be paid to the said parties, for the payment of which well and truly to be made, we bind ourselves, or each of us, our and each of our heirs, executors, administrators and successors jointly and severally, firmly by these presents.

Sealed with our seals and dated this 11th day of April, in the year of our Lord, one thousand nine hundred and sixteen.

48 Whereas, the above named Kate P. McNaughton has prosecuted an appeal to the Supreme Court of the United States to reverse the decree rendered in the above entitled suit by the District Court of the United States for the Southern District of California, Southern Division.

by the District Court of the United States for the Southern District of California, Southern Division.

Now, therefore, the condition of this obligation is such that if the above named *P. L. Crane* shall prosecute said appeal to effect and answer all damages and costs, if he shall fail to make said appeal good, then this obligation shall be void, otherwise the same shall remain in full force and virtue.

KATE P. McNAUGHTON.
ROLLO E. GOODRICH.
SAMUEL W. THOMAS.

Sealed and delivered, and taken and acknowledged, this the 11th day of April, 1916, before me, Arthur L. Falloon, a Notary Public in and for the County of Los Angeles, State of California.

[SEAL.] ARTHUR L. FALLOON,
Notary Public in and for the County of Los Angeles, State of California.

The foregoing bond is approved this 12th day of April, 1916.

OSCAR A. TRIPPET,
District Judge.

49 (Endorsed:) No. C-19. Equity. United States District Court, Southern District of California, Southern Division. Kate P. McNaughton, Plaintiff, vs. Hiram W. Johnson, et al., Defendant. Bond on Appeal. Received copy of within this 11th day of April 1916. U. S. Webb, Attorney General; Robert M. Clarke, Deputy, Attorneys for Defendants. Thomas Lee Woolwine, Geo. C. Cryer. Filed Apr. 12, 1916. Wm. M. Van Dyke, Clerk, by T. F. Green, Deputy Clerk.

50 In the District Court of the United States in and for the Southern District of California, Southern Division.

C-19. Equity.

KATE P. MCNAUGHTON, Plaintiff,
vs.
HIRAM W. JOHNSON, Governor of the State of California; U. S. Webb, Attorney General of the State of California, and Thomas Lee Woolwine, District Attorney of Los Angeles County, California, Defendants.

Order for Clerk to Certify Papers, Documents, et cetera, to the Supreme Court of the United States.

Plaintiff having made application for an appeal to the Supreme Court of the United States from the order of this Court denying plaintiff's application for an interlocutory injunction and said appeal having been duly allowed by order of this Court, now, on motion of Tom L. Johnston, Attorney for the Complainant herein,

It is ordered, that the Clerk prepare and certify a transcript of the record in this case upon plaintiff's said appeal, and forward the same to the Clerk of the Supreme Court of the United States.

Dated this, the 10th day of April, 1916.

OSCAR A. TRIPPET,
Judge of the District Court.

51 (Endorsed:) No. C-19-Equity. United States District Court, Southern District of California, Southern Division. Kate P. McNaughton, Plaintiff, vs. Hiram W. Johnson, et al., Defendants. Order for Clerk to Certify Papers, Documents, et cetera, to the Supreme Court of the United States. Received copy of the within Order this 10th day of April, 1916. U. S. Webb, Rob't M. Clarke, Thomas Lee Woolwine, Dis't Att'y; Geo. E. Cryer, Ch. Dep. Tom L. Johnston, Esq., Attorney for Plaintiff. Filed Apr. 12, 1916. Wm. M. Van Dyke, Clerk, by T. F. Green, Deputy Clerk.

52 In the District Court of the United States in and for the Southern District of California, Southern Division.

C-19. Equity.

KATE P. MCNAUGHTON, Plaintiff,

vs.

HIRAM W. JOHNSON, Governor of the State of California; U. S. Webb, Attorney General of the State of California, and Thomas Lee Woolwine, District Attorney of Los Angeles County, California, Defendants.

Præcipe for Transcript of Record on Appeal.

To William Van Dyke, Esquire, Clerk of the United States District Court in and for the Southern District of California, Southern Division:

You will please, in accordance with the order and citation in the above entitled cause, prepare a transcript of the record in this cause to be filed in the office of the Clerk of the Supreme Court of the United States, and include in said transcript on appeal the following pleadings, proceedings and papers on file, to-wit:

Bill of Complaint;

Opinion of Court denying application for interlocutory injunction;

Petition for Appeal;

Order allowing Appeal;

53 Assignment of Errors;

Citation on Appeal and Clerk's certificate;

Notice of Application for Temporary Restraining Order; and Interlocutory Injunction;

Order Denying Interlocutory Injunction;

Præcipe for Transcript of Record on Appeal;

Order to Certify Transcript of Record;

Affidavit of Service of Assignment of Errors and Citation on Appeal.

Dated this, the 10th day of April, 1916.

TOM L. JOHNSTON,
Solicitor for Complainant.

(Endorsed:) No. c-19-Equity. United States District Court, Southern District of California, Southern Division. Kate P. McNaughton, Plaintiff, vs. Hiram W. Johnson, et al., Defendants. Præcipe for Transcript of Record on Appeal. Received copy of within Præcipe this 10th day of April, 1916. U. S. Webb, Rob't M. Clarke. Thomas Lee Woolwine, Dist. Att'y. Geo. E. Cryer. Tom. L. Johnston, Esq., Attorney for Plaintiff. Filed Apr. 12, 1916. Wm. M. Van Dyke, Clerk, by T. F. Green, Deputy Clerk.

54 In the District Court of the United States in and for the Southern District of California, Southern Division.

No. C-19. Equity.

KATE P. McNAUGHTON, Complainant,

vs.

HIRAM W. JOHNSON, Governor of the State of California; U. S. Webb, Attorney General of the State of California, and Thomas Lee Woolwine, District Attorney of Los Angeles County, California, Defendants.

I, Wm. M. Van Dyke, Clerk of the District Court of the United States of America, in and for the Southern District of California, do hereby certify the foregoing fifty-three (53) typewritten pages, numbered from 1 to 53, inclusive, and comprised in one (1) volume, to be a full, true and correct copy of the Bill of Complaint, Notices of Application for Interlocutory Injunction, with Affidavits showing service on each of the Defendants, Minute Order Denying Application for Interlocutory Injunction, Memorandum Opinion of Court Denying Application for Interlocutory Injunction, Petition for Order Allowing Appeal, Assignment of Errors, Order Allowing Appeal and Fixing Bond, Bond on Appeal, Order for Clerk to Certify Papers, Documents, etc., to the Supreme Court of the United States, and Præcipe for Transcript of Record on Appeal, in the above and therein-entitled action, and that the same together constitute the record on appeal, as specified in the said Præcipe for Transcript of Record on Appeal, filed in my office on behalf of the appellant by her attorney of record.

55 I do further certify that the cost of the foregoing transcript is $22.50, the amount whereof has been paid me by Kate P. McNaughton, the Appellant herein.

In testimony whereof, I have hereunto set my hand and affixed the seal of said District Court of the United States of America, in and for the Southern District of California, Southern Division, this 25th day of April, in the year of our Lord one thousand nine hundred and sixteen, and of our Independence the one hundred and fortieth.

[Seal of the U. S. District Court, Southern Dist. of California.]

WM. M. VAN DYKE,
Clerk of the District Court of the United States of America in and for the Southern District of California,
By LESLIE S. COLYER,
Deputy Clerk.

[United States internal revenue documentary stamp, series of 1914, ten cents, canceled 4/25/16. L. S. C.]

Endorsed on cover: File No. 25,315. S. California D. C. U. S. Term No. 1032. Kate P. McNaughton, appellant, vs. Hiram W. Johnson, Governor of the State of California, et al. Filed May 26th, 1916. File No. 25,315.

In the Supreme Court
OF THE
United States.

Kate P. McNaughton,
Appellant,

vs.

Hiram W. Johnson, Governor of the State of California, U. S. Webb, Attorney General of the State of California, and Thomas Lee Woolwine, District Attorney of the County of Los Angeles, State of California,
Appellees.

Stipulation and Agreement to Advance.

It is hereby stipulated and agreed by counsel for the respective parties hereto that notice of motion to advance the above-entitled cause is hereby waived and that the court may advance the above-entitled cause for hearing at the earliest day convenient to the court during the October term, 1916.

Dated this 20th day of June, A. D. 1916.

Tom L. Johnston
.....
Attorney for Appellant.

.....
U. S. WEBB
ROBERT M. CLARKE
THOMAS LEE WOOLWINE
GEORGE E. CRYER
CHIEF DEPUTY
.....
Attorneys for Appellees.

In the Supreme Court
OF THE
United States.

Kate P. McNaughton,
Appellant,
vs.
Hiram W. Johnson, Governor of the State of California, U. S. Webb, Attorney General of the State of California, and Thomas Lee Woolwine, District Attorney of the County of Los Angeles, State of California,
Appellees.

Motion by Appellant to Advance.

Comes now the appellant in the above-entitled cause, the appellees consenting, as evidenced by stipulation of counsel dated the 20th day of June, A. D. 1916, signed and filed herewith, and moves the court to advance the above-entitled cause for hearing to an early day convenient to the court during the October term, 1916, the reasons prompting this motion are as follows:

The above-entitled cause involves the constitutionality of an act of the legislature of the state of California, known as the Optometry

Law, and this suit was brought by the appellant herein under section 266 of the Judicial Code of the United States, which provides that cases brought under this section shall take precedence over all other business, and the hearing of same shall be in every way expedited.

Wherefore, it is prayed that this application to advance the above-entitled cause for hearing at an early date convenient to the court during the October term, 1916, be allowed.

Respectfully submitted,

Thos. L. Johnston

Counsel for Appellant.